IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO.1428 OF 2007

Mrs. Shubhada Milind Pol. ..Applicant.
Vs.
Milind Ashok Pol and ors. ..Respondents.

Mr.G.R.Hegde for the Applicant.

Mr. Anil Subramanyam for the Respondent No.1.

Mr.S.R.Shinde, A.G.P. for the State.

CORAM: B.H.MARLAPALLE, J.
DATE : August 23, 2007

P.C.

1. Heard Mr. Hegde, the learned counsel for the applicasnt-wife who is seeking transfer of Criminal Case No.350 of 2004 allegedly pending on the file of Judicial Magistrate First Class, Pimpri, Pune to the court of learned Metropolitan Magistrate at Andheri under Section 407 of the Cr.P.C. The said case was registered on the complaint filed by the present applicant on 10.3.2004 to Chaturshrungi Police Station at Pune for the offences punishable under Section-498A, 323, 504, 506 read with 34 of the Indian Penal Code and the accused persons are husband and in laws of the applicant. She stated that she has been staying with her parents at Mumbai from 10.3.2003 and therefore, considering her convenience, the case be transferred to the court at Andheri. She

has also stated that she has filed Marriage Petitioner No.C-172/2004 before the Family Court at Bandra for maintenance under Section 18 of the Hindu Adoption & Maintenance Act,1955 and at the same time the respondent husband has also filed petition for divorce before the Family Court at Pune. It is further pointed out that the said petition filed by the husband and registered as Marriage Petition No.A-616/2004 has been transferred to the Family Court at Bandra as per the order of this court passed on 22.2.2005 in the said Civil Application No.16 of 2005 filed under Section 24 of the Cr.P.C. and revision petition has been clubbed with her petition for maintenance before the Family Court at Bandra. She therefore, stated that it would be for her convenience that the case pending before the learned Magistrate at Pimpri be transferred to the court of Metropolitan Magistrate at Andheri. The learned counsel for the petitioner has also referred to Judgment passed by the Apex Court in the case of **Neelam Kanwar Vs. Devinder Singh Kanwar reported in (2000) 10 Supreme Court Cases 589.**

2. The respondent No.1 has filed an affidavit in reply and opposed this application for transfer. It has been pointed out that the entire cause of action for bringing Case No.350 of 2004 has arisen at the matrimonial home of the applicant and within the territorial jurisdiction

of the learned Judicial Magistrate First Class at Pimpri. It is further stated that on 27.7.2006 a charge against the accused has been framed and on 5.8.2006 onwards the case has been adjourned from time to time for recording evidence. The present petitioner-wife is required to appear as a witness for recording evidence of the prosecution and she has been seeking adjournments on some or other pretext almost on all the dates. She has not stepped into the witness box since last one year also. In the case of Neelam Kanwar (supra) the case sought to be transferred was the case filed by the respondent-husband. In the instant case the original complaint was registered by the present applicant and thereafter on investigation charge sheet has been filed by the Investigating Officer and therefore, it is the responsibility of the Prosecutor to proceed with the case. The applicant is required to be appeared before the court only as a witness. It is also admitted in her petition filed under Section-18 of the Hindu Adoption & Maintenance Act, the Family Court at Bandra passed an order on 3.9.2004 and directed the respondent husband to pay interim maintenance at the rate of Rs.10,000/-p.m. to the applicant. There is no issue from the wedlock as yet. Under these circumstances, I do not find any inconvenience for the present applicant to appear as a witness in Criminal Case No.350 of 2004 presently pending on the file of the learned Judicial Magistrate

First Class at Pimpri, Dist. Pune and more so, when the entire cause of action for the said complaint has arisen within the territorial jurisdiction of the said court. Hence, the application is rejected.

(B.H. MARLAPALLE, J.)